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8 Attorneys for Defendants
 HSBC MORTGAGE CORPORATION (USA) AND
 9 HSBC BANK USA, N.A.

10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA
 12 SAN FRANCISCO DIVISION

13 Philip Wong, Frederic Chaussy, and Leslie
 14 Marie Shearn, individually, on behalf of all
 15 others similarly situated, and on behalf of
 the general public,

16 Plaintiffs,

17 v.

18 HSBC Mortgage Corporation (USA);
 HSBC Bank USA, N.A.; and DOES 1
 19 through 50, inclusive,

20 Defendants.

21 Case No. C 07 2446 MMC [ECF]

**22 DECLARATION OF MICHAEL
 O'ROURKE IN SUPPORT OF
 DEFENDANTS' OPPOSITION TO
 PLAINTIFFS' MOTION FOR
 CONDITIONAL CERTIFICATION,
 PRODUCTION OF UPDATED CLASS
 LIST, AND PARTIAL SUMMARY
 JUDGMENT**

23 Date: February 8, 2008
 Time: 9:00 a.m.
 Courtroom: 7 (19th Floor)
 Judge: Hon. Maxine M. Chesney
 Complaint Filed: June 29, 2007 (Amended)
 Trial Date: Not Yet Set

1 I, Michael O'Rourke, hereby declare and state:

2 1. I have personal knowledge of the facts set forth below. If called as a witness,
 3 I could and would testify competently to the matters set forth in this declaration.

4 2. I have been employed by HSBC Mortgage Corporation (USA) ("HSBC
 5 Mortgage") for almost nineteen (19) years. My job title is Regional Sales Manager for the Bronx,
 6 Brooklyn and Staten Island. I have held this title for two (2) years.

7 3. Currently, I manage twenty-nine (29) loan officers and two (2) sales
 8 managers. The number of loan officers I have managed has varied from nineteen (19) to thirty (30).

9 4. My employer is HSBC Mortgage, which is a separate entity from HSBC Bank
 10 U.S.A., N.A. ("HSBC Bank"). The manager to whom I report, Debbie Dezego, is also an employee
 11 of HSBC Mortgage. I do not report to any manager of HSBC Bank, nor do any of the loan officers
 12 whom I manage. They only report to me, and not an HSBC Bank branch manager.

13 5. All the loan officers whom I manage are employees of HSBC Mortgage. I
 14 specifically tell my loan officers that they do not work for HSBC Bank, and that their
 15 responsibility is to work with the Bank branches, not for them, to provide loans to customers. HSBC
 16 Mortgage Corporation (USA) is listed as the employer name on the business cards of all loan
 17 officers whom I supervise, and HSBC Mortgage is also indicated on their paychecks and W-2 forms.

18 6. I tell loan officers whom I supervise that it is totally up to them how and
 19 where they spend their time during the week. I tell them that they control their own schedule. I tell
 20 my loan officers that the HSBC Bank branches are merely referral sources and how much time the
 21 loan officers spend at the branches is up to them. Some of my loan officers make appointments with
 22 the Bank branches, and some may just drop by during the week. They are not required to spend any
 23 time at particular branches during the week. I do not require my loan officers to call in to the Bank
 24 branches during the week, but as a referral source I recommend that they check in with the Bank
 25 branch twice a week. I tell my loan officers that they should treat the Bank branch like a realtor or
 26 real estate attorney, in that it is a referral source for them.

27 7. I do not require my loan officers to keep a schedule or a calendar, nor do I
 28 require them to document what they have done for the day. I do not track the hours that my loan

1 officers work. However, for loan officers who are lacking in loan production, I will require them to
 2 provide a call report to their sales manager for coaching purposes to improve their loan production.

3 8. I tell my loan officers that they set their own hours. I do not require my loan
 4 officers to tell me where they are each day. How they spend their work day is completely up to
 5 them. They may work as little as they like or as much as they like. When I am recruiting for loan
 6 officers, I tell women that this is a great career for working mothers because of the flexibility to set
 7 your own hours and the ability to work when you want to.

8 9. I tell my loan officers that they are "free lancers," and how they develop a
 10 loan business is up to them. They may choose to network with Bank branch managers, financial
 11 advisors, bank tellers, accountants, whatever they think works for them.

12 10. In my region, we have what are called "up days," also known as "phone
 13 days," which are days in which a loan officer will answer telephone calls at an HSBC Mortgage
 14 office from potential mortgage customers who call HSBC Mortgage's 1-800 number. Participation
 15 in up days is purely on a voluntary basis. Whether or not a loan officer participates in up days is
 16 based on his or her personal preference. Some loan officers may consider up days a good way to
 17 obtain leads, while some loan officers may choose to spend their time differently. If a loan officer
 18 wishes to participate in up days, I will schedule him or her to do this for about one up day per month.

19 11. I have staff meetings occasionally, but generally no more than once per
 20 month. Usually my two sales managers run these meetings.

21 12. I always notify my loan officers about networking events that I learn about. I
 22 do not require my loan officers to attend any such events. How my loan officers obtain leads and
 23 referrals is within their discretion.

24 13. All of my loan officers have laptops and mobile phones. My loan officers are
 25 not required to have a home office.

26 14. Within the New York region, how loan officers utilize sales assistants varies
 27 from other regions because we have very few sales assistants for all of our loan officers.
 28 Accordingly, we have set our own procedures and parameters for how sales assistants are utilized by
 the loan officers and for what is expected of the sales assistants.

15. I provide training to the loan officers whom I manage on an almost daily basis, and the training I provide depends on the individual loan officer. Additionally, how I apply the progressive discipline policy varies by each loan officer, and I will diverge from the progressive discipline policy as circumstances warrant. I view the progressive discipline policy as guidance, and I will often consult with my boss and/or Human Resources when I am making disciplinary decisions with respect to loan officers.

16. Performance goals also vary by region and by manager. I will adjust performance goals based upon the market and the experience and individual compensation goals of my loan officers.

17. There are also variances with respect to compensation of loan officers. For example, I have the discretion to grant loan officers a guarantee of money or a "forgivable draw" when they start. I have granted a forgivable draw as high as \$35,000. Additionally, sometimes I will provide a loan officer a higher draw. I have provided loan officers a draw of up to \$50,000.

18. How much time my loan officers spend analyzing their clients' respective financial situations to determine what mortgage is appropriate varies widely between clients. For example, if a client is self-employed, the loan officer will spend a significant amount of time analyzing that client's financial picture to determine the best mortgage for that client.

19. In 2007, my top two loan officers earned between \$350,000 and \$360,000, over half of which came from commissions.

I declare under penalty of perjury under the laws of the States of California and New York and the United States of America that the foregoing declaration is true and correct to the best of my personal knowledge. Executed this 18th day of January, 2008, in Cross River, New York.



MICHAEL O'ROURKE